

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)

Implementation of the Pay Telephone) CC Docket No. 96-128
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

Illinois Public Telecommunications)
Association, Petition for a Declaratory)
Ruling Regarding the Remedies)
Available for Violations of the)
Commission's Payphone Orders)

**REPLY COMMENTS OF
THE ATLANTIC PAYPHONE ASSOCIATION, INC.**

In its initial comments, The Atlantic Payphone Association, Inc. ("APA") supported the Illinois Public Telecommunications Association's ("IPTA's") petition for a declaratory ruling that payphone service providers ("PSPs") are entitled to refunds back to April 15, 1997 for charges assessed by the Bell Operating Companies ("BOCs") for payphone lines to the extent that such charges exceed rate levels that comply with the *Wisconsin Order's*¹ new services test criteria. APA also supported IPTA's position that BOCs that fail to provide such refunds are not entitled to retain the dial-around compensation such BOCs have collected since April 15, 1997.

¹ *In the Matter of Wisconsin Public Service Commission: Order Directing Filings, Bureau/CPD No. 00-01, Memorandum Opinion and Order, FCC 02-25, 17 FCC Rcd. 2051 (Jan. 31, 2002) ("Wisconsin Order")* *aff'd sub nom. New England Public Communications Council, Inc. v. FCC*, 334 F.3d 69 (D.C. Cir. 2003), *cert. denied*, 124 S. Ct. 2065 (2004).

APA, which represents independent PSPs in the District of Columbia, Maryland and Virginia, focused its comments on Verizon's failure to file new services test-compliant payphone line rates in the District of Columbia and Virginia and to pay appropriate refunds to PSPs taking service in those jurisdictions. As support for its assertion that Verizon's current rates in the District of Columbia and Virginia are *prima facie* not new services test-compliant, APA pointed to the fact that Verizon still has not yet even reduced its rates so as to avoid double recovery of the subscriber line charge ("SLC"), as explicitly mandated by the *Wisconsin Order*. APA Comments at 4-5.

Comments filed by the Florida Public Telecommunications Association, Inc. ("FPTA") concerning BellSouth's behavior in Florida underscore the significance of Verizon's failure to reduce its District of Columbia and Virginia rates by the amount of the SLC. As the FPTA explained:

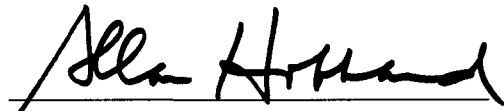
[O]f great relevance and import to the instant FCC proceeding, in the Florida circumstance BellSouth "chose" to reduce its payphone interconnection rates that had been in effect since April 15, 1997 by the exact amount of the Federal EUCL [also known as the SLC] immediately prior to filing its testimony in the Florida docket.[²] . . . [T]his [was a] transparent admission by BellSouth that its prior rates were non-compliant and at direct odds with [the FCC's] clarification and guidance as provided in the Payphone Orders and, most recently in the Wisconsin Orders³

² The reduction FPTA refers to is a rate reduction issued by Bellsouth on October 27, 2003 that became effective November 11, 2003. See Bellsouth's General Subscriber Service Tariff, Section A7 (Coin Telephone Service), Sixth Revised Page 10 (copy attached as Appendix A) and Florida Public Service Commission Tariff Filing Report describing the BellSouth October 27, 2003 tariff filing as "Filing reduces the monthly line rate and the SMARTLine by the amount of the federal end user common line charge" (copy attached as Appendix B).

³ FPTA Comments at 3 (footnotes omitted).

Verizon's behavior in the District of Columbia and Virginia is even more egregious than BellSouth's in Florida. BellSouth, at least, has recognized that at a minimum it had to reduce its payphone line rates in Florida – and other states in the BellSouth region as well⁴ – by the amount of the SLC. As we explained in our comments and re-emphasize here, Verizon, by failing to take even the minimal step of reducing its District of Columbia and Virginia rates by the amount of the SLC, has highlighted the need for the Commission to declare in this proceeding that the BOCs must satisfy a key condition to their continuing receipt of dial-around compensation: to implement new services test-compliant rates and pay applicable refunds back to April 15, 1997.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allan Hubbard", written over a horizontal line.

Albert H. Kramer

Allan C. Hubbard

Dickstein, Shapiro Morin & Oshinsky, LLP

2101 L Street, NW

Washington, DC 20037-1526

(202) 828-2226

*Attorneys for The Atlantic Payphone
Association, Inc.*

Dated: September 7, 2004

⁴ See, e.g., BellSouth tariff pages for payphone line service in Kentucky and Mississippi (copies attached as Appendices C and D) where the tariff pages explicitly address the relationship between payphone line rates and the SLC (see note 1 on the attached Kentucky tariff page and note 2 on the attached Mississippi tariff page).

CERTIFICATE OF SERVICE

I hereby certify that, on September 7, 2004 , a copy of the foregoing Reply Comments of The Atlantic Payphone Association, Inc. was served by electronic mail and/or U. S. Mail, on the following parties as indicated below:

By Electronic Mail

Jon Stover
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
Room 5A-365
445 12th Street, SW
Washington, D.C. 20554
jon.stover@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th Street SW
Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com

By U.S. Mail

Michael W. Ward, Esq.
Illinois Public Telecommunications Association
1608 Barclay Blvd.
Buffalo Grove, Illinois 60089

Paul C. Besozzi, Esq.
Patton Boggs LLP
2550 M Street N.W.
Washington, DC 20037
Counsel for New England Public Communications Council, Inc.

Aaron M. Panner, Esq.
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D. C. 20036
*Counsel for BellSouth Telecommunications, Inc., SBC
Communications Inc., and the Verizon telephone companies*

David S. Tobin, Esq.
Tobin & Reyes, P.A.
7251 West Palmetto Park Road
Suite 205
Boca Raton, Florida 33433
Counsel for Florida Public Telecommunications Association, Inc.

Keith J. Roland
Roland, Fogel, Koblenz & Petroccione, LLP
1 Columbia Place
Albany, New York, 12207
Counsel for Independent Payphone Association of New York, Inc.

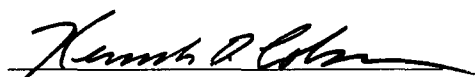
Brooks E. Harlow
David L. Rice
Miller Nash LLP
4400 Two Union Square
601 Union Street
Seattle, WA 98101
Counsel for Northwest Public Communications Council

Craig D. Joyce
Walters & Joyce, P.C.
2015 York Street
Denver, CO 80205
Counsel for Colorado Payphone Association

Gregory Ludvigsen
Ludvigsen's Law Offices
1360 University Ave. West
St. Paul, MN 55104-4086
Counsel for Minnesota Independent Payphone Association

Matthew L. Harvey
Christine F. Ericson
Deputy Solicitor General
John P. Kelliher
Solicitor General
Special Assistant Attorneys General
Illinois Commerce Commission
160 N. LaSalle Street
Suite C-800
Chicago, IL 60601

Howard Meister
President
Payphone Association of Ohio
1785 East 45th Street
Cleveland, OH 44103



Kenneth D. Colson

APPENDIX A

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Sixth Revised Page 10
Cancels Fifth Revised Page 10

ISSUED: October 27, 2003
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: November 10, 2003

A7. COIN TELEPHONE SERVICE**A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)****A7.4.5 Rates and Charges (Cont'd)****A. Access Line Service for PSP - Rates and Charges Applied by The Company (Cont'd)****2. Flat Rate Service for PSP Monthly Charges****a. PSP Access Line Service ¹****(1) Rate Groups 1-6**

	Group						USOC	
	1	2	3	4	5	6	NA	(R)
(a) Per Access Line	\$12.67	\$13.67	\$14.77	\$15.77	\$16.72	\$17.77	NA	
(2) Rate Groups 7 - 12								

	Group						USOC	
	7	8	9	10	11	12	NA	(R)
(a) Per Access Line	\$18.62	\$19.47	\$20.27	\$20.87	\$21.47	\$21.97	NA	

b. No monthly usage allowance applies for Access Line Service for PSP.**c. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in c. following.****(1) Usage Charges**

**Initial Minutes or Fraction
Thereof
\$.025**

**Additional Minute, Each or
Fraction Thereof
\$.01**

d. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.**(1) Usage Charges**

**Initial Minutes or Fraction
Thereof
\$.015**

**Additional Minute, Each or
Fraction Thereof
\$.005**

3. BellSouth SWA charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier.**4. Sent paid long distance charges apply on a per message basis based on toll rates (set forth in A18.3.1.H. of this Tariff).**

Operator handled non-sent paid local calls will be rated to the end user at the rate (set forth in A3.10.1 of this Tariff) plus the appropriate additive operator services charges (set forth in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.

The rates charged the caller for non-sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 will be rated at the Local Call rate specified in A3.10.1 plus appropriate operator services charges (as provided in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.

5. The Access Line Service PSP subscriber who subscribes to Usage Rate Service as described in A7.4.5.A.1 will be charged on a per message basis for sent paid calls at the rates set forth in A7.4.5.A.1.c.(1) of this Tariff.**6. The Access Line Service PSP subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 at the rates set forth in A7.4.5.A.2 of this Tariff.**

Note 1: The exchanges for each rate group are identified in A3.4 of this tariff.

(T)

APPENDIX B



TARIFF FILING SUMMARY REPORT BETWEEN 10/27/2003 AND 11/10/2003

INSTRUCTIONS: TO FIND A CERTAIN TARIFF, USE THE "FIND" FUNCTION IN YOUR PULL DOWN MENU OR PRESS "CONTROL-F". TYPE IN THE TARIFF NUMBER OR THE COMPANY NAME. TO GO TO THE END OF THIS REPORT PRESS "CONTROL-END" ON YOUR KEYBOARD.

IF YOU HAVE ANY QUESTIONS REGARDING THIS REPORT OR TARIFF ISSUES PLEASE CALL 850-413-6480.

THE COMMISSION DOES NOT MAINTAIN ELECTRONIC COPIES OF COMPANY TARIFFS OR PRICE LISTS, NOR ARE THE TARIFFS AND PRICE LISTS AVAILABLE ONLINE.

Tariff No:	T031182
Action:	ADMIN
Company:	<u>BellSouth Telecommunications, Inc. TL720</u>
Effective Date:	11/11/2003
Date Filed:	10/27/2003
Official Filing Date:	
Description:	Filing reduces the monthly line rate and the SMARTLine by the amount of the federal end user common line charge.
Recomm. Date:	
Agenda Date:	
Docket Number:	

Tariff No:	T031183
Action:	ADMIN
Company:	<u>ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine TX056</u>
Effective Date:	10/28/2003
Date Filed:	10/27/2003
Official Filing Date:	
Description:	Filing offers a one-time credit to customers who sign up for Grapevine Service.
Recomm. Date:	
Agenda Date:	
Docket Number:	

Tariff No:	T031184
Action:	ADMIN
Company:	<u>Sprint-Florida, Incorporated TL727</u>

APPENDIX C

BELLSOUTH
TELECOMMUNICATIONS, INC.
KENTUCKY
ISSUED: June 11, 2003
BY: E.C. Roberts, Jr., President - KY
Louisville, Kentucky

GENERAL SUBSCRIBER SERVICES TARIFF

PSC KY. TARIFF 2A
Twelfth Revised Page 8
Cancels Eleventh Revised Page 8
EFFECTIVE: July 1, 2003

A7. COIN TELEPHONE SERVICE**A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)****A7.4.3 Reserved For Future Use****A7.4.4 Reserved For Future Use****A7.4.5 Rates And Charges****A. Rates and Charges Applied by the Company****1. Flat Rate Service Monthly Charges Per Access Line****a. Access line basic rate****(1) Per Access Line**

	Monthly Rate	USOC	
(a) Group 1 (0-13,800)	\$21.70¹	NA	(I)(T)
(b) Group 2 (13,801 - 25,100)	21.70¹	NA	(I)(T)
(c) Group 3 (25,101 - 45,500)	21.70¹	NA	(I)(T)
(d) Group 4 (45,501 - 200,800)	21.70¹	NA	(I)(T)
(e) Group 5 (200,801 - 1,191,800)	21.70¹	NA	(I)(T)
b. The following access line feature charge is applicable in addition to the monthly charges in A7.4.5.A.1.a. preceding.			
(1) Public telephone access line²			(T)
(a) Unrestricted, outward, each ^{3,4}	\$.90	1ZY	(T)
(b) Unrestricted, two way, each ^{3,4}	.90	1Z2	(T)
(c) Restricted, outward, each ^{3,4,5}	.90	1Z3	(T)
(d) Restricted, two way, each ^{3,4,5}	.90	1Z5	(T)
(e) Restricted, outward, each ^{3,4,6}	.90	13D	(T)
(f) Restricted, two way, each ^{3,4,6}	.90	13E	(T)
(g) Restricted, two way, each ³	.90	13R	(T)

Note 1: The access line rate is equal to \$29.73 less the current Subscriber Line Charge (SLC) of **\$7.13**. Rates for the SLC may change over time. BellSouth will charge a monthly rate of \$29.73 including the current SLC, and will file tariff revisions in a timely fashion adjusting the access line rate to reflect future changes in the SLC charge. (C)

Note 2: For the Access Line Feature options which do not offer central office blocking of 900 and 976 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #4 defined in A13.20 of this Tariff for business line customers. (T)

Note 3: Provides operator screening. (T)

Note 4: Provides central office blocking of 011+ calls direct distance dialed to numbers outside the North American Numbering Plan. (T)

Note 5: 1+900, 7 or 10 digit local, 1+DDD and 976 are blocked from completion. (T)

Note 6: 1+900, 1+DDD, and 976 are blocked from completion. (T)

APPENDIX D

BELLSOUTH
TELECOMMUNICATIONS, INC.
MISSISSIPPI
ISSUED: September 11, 2003
BY: President - Mississippi
Jackson, Mississippi

GENERAL SUBSCRIBER SERVICES TARIFF

Third Revised Page 8.1
Cancels Second Revised Page 8.1

EFFECTIVE: October 13, 2003

A7. COIN TELEPHONE SERVICE**A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)****A7.4.5 Rates And Charges**

- A. Access line service for PSP telephones is *only* available on *a flat* rate basis. (Cont'd) (C)
2. Flat Rate Service Monthly Charges¹ (T)
- a. Per Access Line

	Monthly Rate ^{2,3}	USOC	(T)
(1) Unrestricted, outward ⁴	\$17.86	1ZB	(R)(T)
(2) Unrestricted, two way ⁴	17.86	1ZA	(R)(T)
(3) Restricted, outward ^{4,5,6}	17.86	1ZY	(R)(T)
(4) Restricted, two way ^{4,5,6}	17.86	1FZ	(R)(T)
(5) Restricted, outward ^{5,6,7}	17.86	1Z3	(R)(T)
(6) Restricted, two way ^{5,6,7}	17.86	1Z5	(R)(T)
(7) Restricted, outward ^{5,6,8}	17.86	13D	(R)(T)
(8) Restricted, two way ^{5,6,8}	17.86	13E	(R)(T)

- Note 1:** Without waiver of any of BellSouth's rights, which rights are expressly reserved, this rate complies with the "new services test" as applied by the Federal Communications Commissions Memorandum Opinion and Order *In the Matter of Wisconsin Public Service Commission*, released January 31, 2002. (N)
- Note 2:** The access line rate is equal to \$24.99 less the current Subscriber Line Charge (SLC) of \$7.13. Rates for the SLC may change over time. BellSouth will charge a monthly rate of \$24.99 including the current SLC, and will file tariff revisions in a timely fashion adjusting the access line rate to reflect future changes in the SLC charge. (N)
- Note 3:** Rates will be effective October 1, 2003. New rates and credits will be implemented beginning with billing after the tariff effective date. (N)
- Note 4:** For Access Lines which do not offer central office blocking of 900 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option Number 4 defined in A13.20 of this Tariff. (T)
- Note 5:** Provides operator screening. (T)
- Note 6:** Provides central office blocking of 011+ calls direct distance dialed to numbers outside the North American Numbering Plan. (T)
- Note 7:** 1+900, 7 or 10 digit local and 1+DDD calls are blocked from completion. (T)
- Note 8:** 1+900 and 1+DDD calls are blocked from completion. (T)